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CLIFFORD CHANCE US LLP
31 WEST 52ND STREET
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AUG 07 2008

OFFICE OF PETITIONS

In re Application of :
Chin, et al. : DECISION ON PETITION
Application No. 09/394,824 :
Filed: September 13, 1999 :
Atty. Dkt. No.: SOM-01601 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed March 21, 2008.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned December 12, 2007 for failure to timely submit a proper reply to the Notice to File Correct Application Papers (Notice) mailed October 11, 2007. The Notice set a two month non-extendible shortened statutory period of time for reply.

The Notice advised that the specification filed March 13, 1999 referred to Figures 1-20 and that the original drawings filed March 13, 1999 included Figures 1-20 only. The Notice further advised that the replacement drawings filed June 5, 2007 included Figs. 1-20 plus 12 additional figures, Figs. 21-32. The Notice required the submission of corrected drawings, i.e., Figures 1-20.

The reply filed December 14, 2007 was deemed non-compliant because the reply contained drawing figures 1-32.

Notice of Abandonment was mailed February 8, 2008.

Petitioners argue that while the specification described Figures 1-20, "as a result of a USPTO administrative error, Figs. 1-32 were accepted in an Office action dated May 11, 2005." Petitioners

further indicate that without any deceptive intent, and relying on the May 11 Office Action, applicants resubmitted on June 1, 2007 Figs. 1-32 in response to the Notice of Allowance dated March 9, 2007.

Petitioners arguments have been carefully considered, but are not found convincing. While petitioners relied on the Office action mailed May 11, 2005, petitioners were advised during the March 1, 2007 interview that the drawings were not compliant, as indicated in the examiner's interview summary mailed March 9, 2007. Further, the Notice of Allowance mailed March 9, 2007 also advised applicants that corrected drawings were required. In addition, the Notice to File Corrected Application Papers mailed October 11, 2007 advised applicants that the drawings submitted June 5, 2007 were not accepted due to the fact that 20 drawing figures were originally filed and applicants had submitted 32 drawing figures in response to the Notice of Allowance.

Accordingly, petitioners' improper reliance on the May 11, 2005 non-final Office action insofar as the drawings are concerned is not grounds for withdrawal of the holding of abandonment given applicants were given notice of three occasions that corrected drawings were required.

In view thereof, the petition to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

ALTERNATE VENUE

It is noted that the petition states that "[i]f a withdrawal of the Notice of Abandonment is not granted, in the interest of expediting the issuance of this allowed patent application, the Commissioner is hereby authorized to charge the amount of \$1,540.00 to cover the Petition fee as set forth in 37 C.F.R. \$1.17(m)."

The statement in and of itself is not a bona fide petition pursuant to 37 CFR 1.137(b).

Thus, petitions are urged to consider filing a petition stating that the entire delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of

an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply, if not previously submitted.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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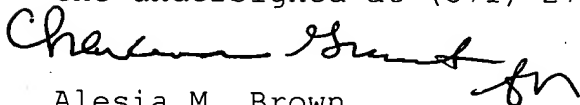
By facsimile:

(571) 273-8300

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401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions